

MONTANA LEGISLATIVE HISTORY

Chapter 627 1979

Bill H _____ S 459 Original bill & history ____C

H. Committee on ^aTaxation

Hearing Date(s) Apr 03 ✓ C

Apr 10 ✓ C

Apr 11 ✓ C

_____ C

Date Out _____ C

S. Committee on ^aTaxation

Hearing Date(s) Feb 19 ✓ C

_____ C

_____ C

_____ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

1 *Senate* BILL NO. *459*
 2 INTRODUCED BY *Turnage* *McCallister*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW
 5 RELATING TO THE GASOLINE TAX REFUND; PROVIDING THAT NO
 6 REFUND IS ALLOWED FOR MOTORBOAT USE; PROVIDING THAT ONLY
 7 AGRICULTURAL USERS MAY APPLY FOR A REFUND ON THE BASIS OF
 8 ESTIMATED OFF-HIGHWAY USE; REVISING THE METHOD OF
 9 RECORDKEEPING REQUIRED TO CLAIM A REFUND; AMENDING SECTIONS
 10 15-70-201 AND 15-70-221 THROUGH 15-70-226, MCA."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 15-70-201, MCA, is amended to read:

14 "15-70-201. Definitions. As used in this part, unless
 15 the context requires otherwise, the following definitions
 16 shall apply:

17 (1) "Agricultural use" means use of gasoline by a
 18 person whose major endeavor and primary source of earned
 19 income is from the business of farming or ranching.

20 (2) "Aviation dealer" means any person in this
 21 state engaged in the business of selling aviation gasoline,
 22 either from a wholesale or retail outlet, on which the
 23 license tax has been paid to a licensed distributor as
 24 herein provided for.

25 (3) "Aviation gasoline" means gasoline or any other

1 liquid fuel by whatsoever name such liquid fuel may be known
 2 or sold, compounded for use in and sold for use in aircraft,
 3 including but not limited to any and all such gasoline or
 4 liquid fuel meeting or exceeding the minimum specifications
 5 prescribed by the United States for use by its military
 6 forces in aircraft.

7 (4) "Bulk delivery" means placing gasoline in storage
 8 or containers. The term does not mean gasoline delivered
 9 into the supply tank of a motor vehicle.

10 (5) (a) Gasoline refined, produced, manufactured,
 11 or compounded in this state and placed in tanks thereat or
 12 gasoline transferred from a refinery or pipeline terminal in
 13 this state and placed in tanks thereat or gasoline imported
 14 into this state and placed in storage at refineries or
 15 pipeline terminals shall be deemed to be "distributed", for
 16 the purpose of this part, at the time the gasoline is
 17 withdrawn from such tanks, refinery, or terminal storage for
 18 sale or use in this state or for the transportation to
 19 destinations in this state other than by pipeline to another
 20 refinery or pipeline terminal in this state. When withdrawn
 21 from such tanks, refinery, or terminal, such gasoline may be
 22 distributed only by a person who is the holder of a valid
 23 distributor's license.

24 (b) Gasoline imported into this state, other than that
 25 gasoline placed in storage at refineries or pipeline

1 terminals, shall be deemed to be "distributed" after it has
2 arrived in and is brought to rest in this state.

3 ~~44161~~ "Distributor" means:

4 (a) any person who engages in the business in this
5 state of producing, refining, manufacturing, or compounding
6 gasoline for sale, use, or distribution;

7 (b) any person who imports gasoline for sale, use, or
8 distribution;

9 (c) any dealer licensed as of January 1, 1969, except
10 a dealer at an established airport.

11 ~~45171~~ "Gasoline" includes all products commonly or
12 commercially known or sold as gasolines, including
13 casinghead gasoline, natural gasoline, aviation gasoline,
14 and all flammable liquids composed of a mixture of selected
15 hydrocarbons expressly manufactured and blended for the
16 purpose of effectively and efficiently operating internal
17 combustion engines. Gasoline does not include special fuels
18 as defined in 15-70-301(6).

19 ~~46181~~ "Import" shall include and mean to receive into
20 any person's possession or custody first after its arrival
21 and coming to rest at destination within the state of any
22 gasoline shipped or transported into this state from point
23 of origin without this state other than in the fuel supply
24 tank of a motor vehicle.

25 ~~47191~~ "Motor vehicle" means all vehicles operated or

1 propelled upon the public highways or streets of this state
2 in whole or in part by the combustion of gasoline.

3 ~~481101~~ "Person" means any person, firm, association,
4 joint-stock company, syndicate, or corporation.

5 ~~491111~~ "Use" shall include and mean the operation of
6 motor vehicles upon the public roads or highways of the
7 state or of any political subdivision thereof."

8 Section 2. Section 15-70-221, MCA, is amended to read:

9 "15-70-221. Refund authorized. (1) Any person who
10 shall purchase and use any gasoline on which the Montana
11 gasoline license tax has been paid for operating or
12 propelling stationary gasoline engines, tractors used off
13 the public highways and streets, motorboats, ~~or-for-cleaning~~
14 ~~or---dyeing~~ or for any commercial use other than propelling
15 vehicles upon any of the public highways or streets of this
16 state shall be allowed a refund of the amount of tax paid
17 directly or indirectly on the gasoline so used. Such refund
18 or drawback should in no instance exceed the tax paid or
19 be paid to the state and no refund shall be allowed of that
20 portion of the tax per gallon upon aviation gasoline
21 allocated to the department of community affairs by
22 67-1-301.

23 (2) Any distributor paying the gasoline license tax to
24 this state erroneously shall be allowed a credit or refund
25 of the amount of tax so paid."

Section 3. Section 15-70-222, MCA, is amended to read:

"15-70-222. Required records. (1) Gasoline purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which used. Gasoline on hand, determined by actual measurement, shall be deducted from a claim and shall be reported as an opening inventory on the next claim. Credit for--the--inventory--is--allowed--on--the--next--claim--if--filed--within--14--months--from--the--filing--date--of--the--claim--which--established--the--inventory.

(2) If separate storage tanks are maintained for highway use and off-highway use on claimant's premises for use in licensed vehicles and in unlicensed equipment, the bulk purchase delivery invoices shall be so marked by the dealer at the time of delivery. No further record is required, provided ~~that no gasoline is withdrawn from the off-highway tank for licensed vehicles~~ refunds are claimed only on the number of gallons delivered into the unlicensed equipment tank. Withdrawal of gasoline from the off-highway unlicensed vehicle tank for licensed vehicles will invalidate this method of determining refundable gallonage.

(3) Special storage facilities ~~in the woods or in farm fields or for other uses~~ used for certain periods must be identified and explained. If such storage is used entirely

for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into such storage.

~~{4}--Fuel--purchased--in--small--containers--for--nonhighway use--must--be--identified--on--the--purchase--invoice--and--no further--record--is--required.~~

~~{5}{4}~~ Service stations, bulk dealers, and marinas must prepare a separate and complete invoice for each withdrawal of gasoline for own use upon which a refund is to be claimed.

~~{6}{5}~~ When no highway use of gasoline is deducted from the claim, the applicant must substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the department of revenue.

~~{7}{6}~~ Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the gasoline used to operate the vehicle on roads or property in private ownership if such person has maintained the following records:

(a) the total number of highway miles operated-by-each licensed-motor-vehicle--including--private--passenger--cars traveled on and off public roads by each licensed vehicle;

(b) total gallons of gasoline used in each vehicle--to include both refund and nonrefund use;

(c) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels purchased at service stations or received from other sources."

Section 4. Section 15-70-223, MCA, is amended to read:

"15-70-223. Estimated Estimate allowed for agricultural use. (1) ~~Gallons--of--gasoline--used--off--the~~ roadways, where not verifiable by records of actual use, may be estimated by the applicant according to the following schedule:

~~(a)--on--the--first--1,000--gallons--of--gasoline--purchased~~ or any part thereof, 45% of gasoline purchased;

~~(b)--on--the--next--1,000--gallons--of--gasoline--purchased--or~~ any part thereof, 60% of gasoline purchased;

~~(c)--on--the--next--1,000--gallons--of--gasoline--purchased--or~~ any part thereof, 65% of gasoline purchased;

~~(d)--on--any--gasoline--purchased--in--excess--of--3,000~~ gallons, 70% of gasoline purchased. An applicant whose use qualifies as agricultural use may apply for a refund of 60% of the applicable tax on the gallons of gasoline as indicated by bulk delivery invoices as an estimate of off-roadway use.

(2) If any invoice is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be

required by the department of revenue.

(3) ~~Any--applicant--who--does--not--elect--to--estimate--the~~ off-highway use of gasoline according to the schedule in subsection--(1)--shall--maintain--records--as--provided--for--in 15-70-222. An applicant whose use does not qualify as agricultural use may not estimate and must maintain records as required by 15-70-222."

Section 5. Section 15-70-224, MCA, is amended to read:

"15-70-224. Determination of highway use. Highway use for each vehicle ~~may be~~ is determined by ~~actual~~ actual measurement ~~or may be computed by dividing the average miles per gallon~~ highway operation consumption rate into the number of highway miles operated dividing the average miles per gallon rate into the number of miles traveled on public roads."

Section 6. Section 15-70-225, MCA, is amended to read:

"15-70-225. Application for refund -- filing -- correction by department. (1) The application for refund shall be a signed statement, on a form furnished by the department of revenue, accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery, showing the total amount of gasoline purchased, the total amount of gasoline on which a refund is claimed, and the amount of the tax claimed for refund. Such further information pertaining to such claim shall be furnished as required by the department.

~~(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery under 15-70-201 is not valid for refund purposes.~~

~~(2)(3)~~ All applications for refunds shall be filed with the department within 14 months after the date on which the gasoline was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid within 3 years after the date of such erroneous payment.

~~(3)(4)~~ Should the department find that the statement contains errors which are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement."

Section 7. Section 15-70-226, MCA, is amended to read:

"15-70-226. Approval or rejection of claim. (1) The department shall have 120 days after receiving the claim to approve or reject it. If approved, the department of revenue shall issue a credit in lieu of refund for the amount of the claim if the claimant is a distributor; for all other persons, a warrant shall be drawn upon the state treasurer for the amount of the claim.

(2) If the department determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement

in the claim or affidavit is willfully false and made for the purpose of misleading, the department ~~may~~ **shall** reject such claim in full. If a claim is rejected, the department may suspend claimant's right to refund for a period not to exceed 1 year."

-End-

SB 459

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 19, 1979

The thirty-first meeting of the committee was held on the above date in Room 415 of the State Capitol Building, Chairman Turnage president.

ROLL CALL: Roll call found all members present with the exception of Senator Roskie, who was excused. Witnesses presenting testimony are listed on attached Register.

CONSIDERATION OF SENATE BILL 430: Senator O'Hara briefly presented his bill, turning detailed introduction over to Mr. Hjort. He said the bill provides gas tax rebate to cab owners in Montana of 8¢ per gallon used. He referred to the fiscal impact and the impact showed there would be approximately \$19,000 per year and approximately \$38,000 for the biennium. He stated cab operations in the state are regulated by the Public Service Commission and any rate changes must go through the PSC. He said the impending cost for gasoline is prompting the cab owners to seek the refund and are asking for relief for the cab companies through this avenue, rather than going through the PSC which takes a longer time. He said the alternative, without this refund, would be to raise the rates and they hesitated to do this because the people most affected by the higher rates would be lower income people and the elderly, people who could afford to pay higher rates the least.

Mr. Steiert spoke next, representing the Montana cab owners, and said there have been substantial increases in the operation costs. Mr. Hjort then presented a chart showing the nine states that now give gas tax refunds to cab companies, see Exh. #1, attached. He cited increase in gasoline prices, higher cost of insurance and higher cost of wages as reasons for the concern on the part of the cab owners. Mr. Harrington also spoke as a proponent and said from 15 cab companies in Butte some years ago, there was now but one company and volume was also down, to 18%.

Following his testimony the Chairman asked for other proponents, or opponents, and there being none, called for questions by the committee. They asked about privately owned bus services in the state and the witnesses present said they knew of none. The committee also asked about number of cabs in the state and they were told there were 65 cabs in the state. Following the brief questioning, the hearing was closed on SB430.

• CONSIDERATION OF SENATE BILL 459: Senator Turnage said the bill came about because of a problem that had arisen regarding a man who was purchasing gas at a retail station and claimed it as his second storage tank. He said the bill also deals with definition of agricultural use in order to exclude people who were "hobby ranchers." He then presented Mr. Nichols who further explained the bill. He distributed Exh. #2, showing the moneys currently being refunded under the options available in the present

law. He pointed out portions of the bill where the Department was having problems both in interpretation and enforcement of the statutes. Mr. Miller then gave considerable testimony on the claims made under the options since 1978, to indicate the Department has paid out considerably higher refunds, many of them to companies doing relatively the same amount of business. He mentioned also several branches of the Federal government had average refunds before the law was changed, and pointed out how the refunds had changed since, remarking that the increase was not justified. He said there are also instances of the gasoline in some companies being used in company cars, by employees also, for on-highway use, yet they still were filing for, and receiving, their gas refunds.

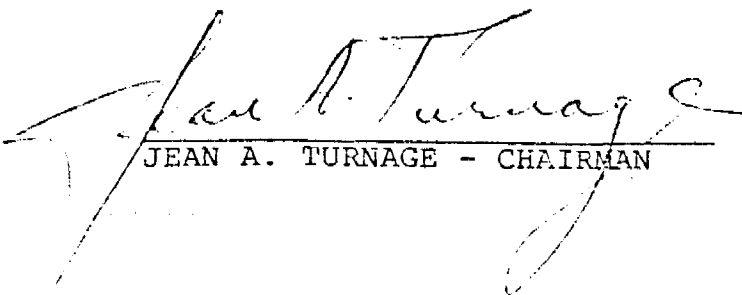
He pointed out another change the bill does and that is to put a 60% flat rate rather than a sliding scale, in computing amount of gas used, and tax refund for off-road use. The bill also defines more clearly that individuals using the two-tank system must have both tanks on the premises. The bill's proponents hope in these ways to tighten up the abuses of the law that are being perpetrated at present. Senator Watt asked if this bill would tighten up the refunds and Mr. Nichols replied he felt that with this legislation only agricultural claims could use option (1). Other industries would have to use other options. He said some large on-the-farm gas users would be hurt slightly, others would benefit from the flat rate.

Following their questions of the proponents, the members decided to move the bill.

Senator Towe Moved SB459 Do Pass. His motion carried unanimously.

The committee then heard the continuance of RID, SID and ID report as compiled by Researcher Terry Cohea. The report was compiled for the committee because of the many bills relating to the special improvement districts that have been heard, and remain in the committee. The Chairman had asked Mrs. Cohea to prepare the report for the committee's edification.

Following her explanation of the report, the meeting was adjourned.



JEAN A. TURNAGE - CHAIRMAN

Date FEB. 19 - 19

ROLL CALL

SENATE TAXATION COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
SEN. GOODOVER (Vice Chairman)	✓		
SEN. BROWN	✓		
SEN. HAGER	✓		
SEN. MANLEY	✓		
SEN. MANNING	✓		
SEN. McCOLLUM	✓		
SEN. NORMAN	✓		
SEN. ROSKIE			✓
SEN. SEVERSON	✓		
SEN. TOWE	✓		
SEN. WATT	✓		
CHAIRMAN TURNAGE	✓		

Each Day Attach to Minutes.

Encl. #2

STATE OF MONTANA
DEPARTMENT OF REVENUE

MOTOR FUEL TAX DIVISION
HELENA, MONTANA 59601

Application for Refund
of
Gasoline Tax



Chairman Huennekens asked how the amount used is determined. Mr. Huss said the Department of Highways makes periodic audits. Norris Nichols said they had pretty good control of this.

Rep. Johnson asked if this could be setting a precedent by exempting them from the tax. Mr. Huss said it is only clarifying that they are exempt. Everybody else involved with special fuels will be using the highway.

Senator Jean A. Turnage, District #13, Polson, chief sponsor of SB 459, said this was introduced with the support of the Motor Fuels Division.

It will make the administration of the act better. It
SENATE BILL will tighten up on refunds that may not be deserved.
459 Mr. Miller, Motor Fuels Division, who is responsible for
this act is out of town and if information is desired of
him perhaps the bill could be put in a subcommittee and he
could be consulted on his return. The bill attempts to define bona fide
agricultural use. Senator Turnage read from sections of the bill. A paper
showing the recap of annual gas refunds for all occupations, prepared by the
Department of Revenue, Motor Fuels Tax Division, and an application blank for
applying for the gasoline tax refund was passed to the members and a copy is
attached.

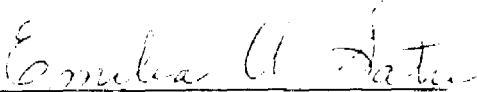
Norris Nichols, Motor Fuels Division, said this would allow agriculture users to estimate refundable gallonage and require all other users to maintain records in order to claim a refund. Most everyone is receiving more under option 1 than they are under the other two options.

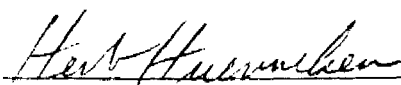
There were no opponents.

Senator Turnage closed.

During questions from the committee it was mentioned the agricultural definition needs to be cleaned up.

Meeting adjourned at 11:05 a.m.


Emelia A. Satre, Asst. Sec.


HERB HUENNEKENS, CHAIRMAN

Rep. Dozier said we have a reciprocal agreement with other states. Amend the bill so it is clear we have the agreements with other states.

The researcher said this could be added on page 2, line 2 by inserting "and any vehicles owned by other states that have a reciprocal agreement with the state of Montana." He said he would check this out with Mr. Copley. This amendment carried unanimously with those present.

Vice-Chairman Dassinger called for a vote on the motion of BE CONCURRED IN AS AMENDED and this motion carried unanimously with those present. Rep. Dozier will carry the bill.

SENATE BILL 415

Representative Harrington moved be concurred in. He said it is a good bill. The motion to BE CONCURRED IN carried unanimously with those present. Rep. Underdal will carry the bill on the floor.

SENATE BILL 416

Representative Harrington moved be not concurred in. He said there is not much to be gained from this bill.

Representative Fabrega agreed it would complicate the bookkeeping and better to kill the bill. Rep. Sivertsen agreed.

The motion of BE NOT CONCURRED IN carried unanimously with those present.

SENATE BILL 459

Representative Harrington moved be concurred in. He said it was a good bill and clarifies the use of gas as far as agriculture is concerned.

Representative Lien said he did not like the definition. A person making 49% of his income from farming could not get agricultural use for his gas. He said this would be a hardship for some parttime farmers. Big farmers will be using diesel so this would discriminate against the small ones.

Vice-Chairman Dassinger asked if the committee would like to hold this bill and check with Mr. Nichols about possible problems. It was agreed to do this.

SENATE BILL 523

Representative Harrington said his subcommittee suggested a be concurred in.

Representative Nordtvedt opposed the bill. He felt this was another step in our trend to differentiate in our property tax for another special group.

Rep. Williams said we have a classification now for new things which is 3%. This would set up another classification.

Rep. Fabrega said the tax classification would cover everything--equipment, grain storage, grain--whole ball of wax. It would be at 2%. He said he supports the bill as gasohol could be the partial answer to the crunch.

SENATE JOINT RESOLUTION 5

Representative Fabrega moved BE CONCURRED IN and the motion carried with Reps. Nordtvedt and Dassinger voting no and absent were Reps. Fagg, Huennekens and Robbins. Rep. Fabrega will carry the bill on the floor.

SENATE BILL 459 (BACK TO IT)

Representative Lien asked since Mr Nichols was present if they could continue discussion of this bill. He said his concern was for the parttime farmers who work in town and the biggest portion of their income is not from the farm and yet they would be entitled to a refund.

Mr. Nichols said they could use option 2 or 3. The bill is intended to get at the people you are discussing--hobby farmers. Most of the gas they are filing for is used to commute.

In answer to a question on motorboats Mr. Nichols said if you are running a motorboat you are already getting a share of .9 of one percent. Snowmobiles are not allowed a refund. If you operate a snowmobile or boat commercially you can claim a refund.

The researcher on a point of information said page 7, section 4 permits the agriculture use definition to estimate and anyone else has to keep actual records.

Mr. Norris asked if he could suggest an amendment with regards to key locks. Lots of these are going in.

Rep. Lien said he would volunteer to work with Mr. Nichols to come up with an amendment.

Vice-Chairman Dassinger said the bill would be held awaiting the report.

SENATE BILL 71

Rep. Gilligan said this was in their subcommittee.

Rep. Johnson moved BE CONCURRED IN. This motion carried unanimously with those present. Rep. Johnson will carry the bill on the floor.

SENATE BILL 75

Rep. Gilligan said this bill was in the subcommittee and moved it be concurred in.

Rep. Lien said the effect of this bill is if they have a currently registered vehicle they can get a 90 day temporary permit. This would alleviate something that has been a hardship for people working in the state temporarily.

The motion of BE CONCURRED IN carried unanimously with those present. Rep. Dassinger will carry the bill on the floor.

Representative Williams said if the feeling of the committee is that we shouldn't send it back to the Senate, I will go along with it. But I agree with Mr. Zinnecker.

Representative Lien said clarify that the state does it. We have nothing to lose and everything to gain on a short conference committee.

Rep. Fabrega asked Mr. Zinnecker if this is an amendment that the Seante rejected. Mr. Zinnecker said no, it had not been submitted in the Senate.

Chairman Huennekens asked for a voice vote on the amendment. Reps. Dozier and Dassinger voted no. The motion carried.

Representative Hirsch moved the bill as amended be concurred in. This motion passed unanimously with those present. The bill receives a BE CONCURRED IN AS AMENDED committee recommendation. Rep. Hirsch will carry the bill.

SENATE BILL 459

Representative Lien said this bill would exclude hobby farmers from using option 1 but they could still use option 2 and 3. He moved the bill be concurred in.

Representative Johnson moved a substitute motion to amend the bill on page 7 by reinserting the existing language which she said is according to use.

Representative Lien commented that this would benefit the large gasoline users to the detriment of the smaller. He said he would personally benefit from this amendment. The break even point will be \$4,000.

Representative Williams felt the original language comes closer to actual use.

Representative Fabrega said the bill puts forth a simplified formula. They can choose which option they want but must keep records.

The staff researcher responded that under the law now you can estimate or keep records. What this bill would do is allow only agricultural users to estimate - but they don't have to estimate, they can keep records. On page 4 is the general refund authorization and it is allowed for anybody. Section 4 allows agricultural users to estimate.

Question was called on Rep. Johnson's amendment and a recorded vote was taken and the motion failed 5 to 11. Those voting yes were Reps. Burnett, Johnson, Nortvedt, Reichert and Underdal and absent were Reps. Bertelsen, Hirsch and Robbins.

Chairman Huennekens called for a voice vote on the motion to concur and this motion carried with Reps. Johnson and Nortvedt voting no and the same absent. Senate Bill 459 receives a BE CONCURRED IN committee recommendation. Rep. Lien will carry the bill.

SENATE BILL NO. 459

INTRODUCED BY TURNAGE, McCALLUM

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW RELATING TO THE GASOLINE TAX REFUND; PROVIDING THAT NO REFUND IS ALLOWED FOR MOTORBOAT USE; PROVIDING THAT ONLY AGRICULTURAL USERS MAY APPLY FOR A REFUND ON THE BASIS OF ESTIMATED OFF-HIGHWAY USE; REVISING THE METHOD OF RECORDKEEPING REQUIRED TO CLAIM A REFUND; AMENDING SECTIONS 15-70-201 AND 15-70-221 THROUGH 15-70-226, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-70-201, MCA, is amended to read:

"15-70-201. Definitions. As used in this part, ~~unless the context requires otherwise,~~ the following definitions shall apply:

~~(1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source of earned income is from the business of farming or ranching.~~

~~(2) "Aviation dealer" means any person in this state engaged in the business of selling aviation gasoline, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as herein provided for.~~

~~(3) "Aviation gasoline" means gasoline or any other~~

liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

~~(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.~~

~~(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat or gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks thereat or gasoline imported into this state and placed in storage at refineries or pipeline terminals shall be deemed to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from such tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from such tanks, refinery, or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.~~

~~(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline~~

1 terminals, shall be deemed to be "distributed" after it has
2 arrived in and is brought to rest in this state.

3 ~~†4†161~~ "Distributor" means:

4 (a) any person who engages in the business in this
5 state of producing, refining, manufacturing, or compounding
6 gasoline for sale, use, or distribution;

7 (b) any person who imports gasoline for sale, use, or
8 distribution;

9 (c) any dealer licensed as of January 1, 1969, except
10 a dealer at an established airport.

11 ~~†5†171~~ "Gasoline" includes all products commonly or
12 commercially known or sold as gasolines, including
13 casinghead gasoline, natural gasoline, aviation gasoline,
14 and all flammable liquids composed of a mixture of selected
15 hydrocarbons expressly manufactured and blended for the
16 purpose of effectively and efficiently operating internal
17 combustion engines. Gasoline does not include special fuels
18 as defined in 15-70-301(6).

19 ~~†6†181~~ "Import" shall include and mean to receive into
20 any person's possession or custody first after its arrival
21 and coming to rest at destination within the state of any
22 gasoline shipped or transported into this state from point
23 of origin without this state other than in the fuel supply
24 tank of a motor vehicle.

25 ~~†7†191~~ "Motor vehicle" means all vehicles operated or

1 propelled upon the public highways or streets of this state
2 in whole or in part by the combustion of gasoline.

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4 joint-stock company, syndicate, or corporation.

5 ~~†9†1111~~ "Use" shall include and mean the operation of
6 motor vehicles upon the public roads or highways of the
7 state or of any political subdivision thereof."

8 Section 2. Section 15-70-221, MCA, is amended to read:

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10 shall purchase and use any gasoline on which the Montana
11 gasoline license tax has been paid for operating or
12 propelling stationary gasoline engines, tractors used off
13 the public highways and streets, ~~motorboats, or for cleaning~~
14 ~~or--dyeing~~ or for any commercial use other than propelling
15 vehicles upon any of the public highways or streets of this
16 state shall be allowed a refund of the amount of tax paid
17 directly or indirectly on the gasoline so used. Such refund
18 or drawback should in no instance exceed the tax paid or to
19 be paid to the state and no refund shall be allowed of that
20 portion of the tax per gallon upon aviation gasoline
21 allocated to the department of community affairs by
22 67-1-301.

23 (2) Any distributor paying the gasoline license tax to
24 this state erroneously shall be allowed a credit or refund
25 of the amount of tax so paid."

Section 3. Section 15-70-222, MCA, is amended to read:

*15-70-222. Required records. (1) Gasoline purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which used. Gasoline on hand, determined by actual measurement, shall be deducted from a claim and shall be reported as an opening inventory on the next claim. ~~Credit for the inventory is allowed on the next claim if filed within 14 months from the filing date of the claim which established the inventory.~~

(2) If separate storage tanks are maintained for ~~highway use and off-highway use on claimant's premises for use in licensed vehicles and in unlicensed equipment,~~ the bulk purchase ~~delivery~~ invoices shall be so marked by the dealer at the time of delivery. No further record is required, ~~provided that no gasoline is withdrawn from the off-highway tank for licensed vehicles~~ refunds are claimed only on the number of gallons delivered into the unlicensed equipment tank. Withdrawal of gasoline from the ~~off-highway unlicensed vehicle~~ tank for licensed vehicles will invalidate this method of determining refundable gallonage.

(3) Special storage facilities ~~in the woods or in farm fields or for other uses~~ used for certain periods must be identified and explained. If such storage is used entirely

for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into such storage.

~~(4) Fuel purchased in small containers for nonhighway use must be identified on the purchase invoice and no further record is required.~~

~~(5)(4)~~ Service stations, bulk dealers, and marinas must prepare a separate and complete invoice for each withdrawal of gasoline for own use upon which a refund is to be claimed.

~~(6)(5)~~ When no highway use of gasoline is deducted from the claim, the applicant must substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the department of revenue.

~~(7)(6)~~ Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the gasoline used to operate the vehicle on roads or property in private ownership if such person has maintained the following records:

(a) the total number of highway miles operated by each ~~licensed motor vehicle, including private passenger cars~~ traveled on and off public roads by each licensed vehicle;

(b) total gallons of gasoline used in each vehicle ~~to include both refund and nonrefund use;~~

(c) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels purchased at service stations or received from other sources."

Section 4. Section 15-70-223, MCA, is amended to read:

"15-70-223. Estimated Estimate allowed for agricultural use. (1) ~~Gallons of gasoline used off the roadways where not verifiable by records of actual user may be estimated by the applicant according to the following schedules:~~

~~(a) on the first 1,000 gallons of gasoline purchased or any part thereof, 45% of gasoline purchased;~~

~~(b) on the next 1,000 gallons of gasoline purchased or any part thereof, 60% of gasoline purchased;~~

~~(c) on the next 1,000 gallons of gasoline purchased or any part thereof, 65% of gasoline purchased;~~

~~(d) on any gasoline purchased in excess of 3,000 gallons, 70% of gasoline purchased. An applicant whose use qualifies as agricultural use may apply for a refund of 60% of the applicable tax on the gallons of gasoline as indicated by bulk delivery invoices as an estimate of off-roadway use.~~

(2) If any invoice is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be

required by the department of revenue.

(3) ~~Any applicant who does not elect to estimate the off-highway use of gasoline according to the schedule in subsection (1) shall maintain records as provided for in 15-70-222. An applicant whose use does not qualify as agricultural use may not estimate and must maintain records as required by 15-70-222.~~"

Section 5. Section 15-70-224, MCA, is amended to read:

"15-70-224. Determination of highway use. Highway use for each vehicle may be is determined by actual measurement or may be computed by dividing the average miles per gallon highway operation consumption rate into the number of highway miles operated dividing the average miles per gallon rate into the number of miles traveled on public roads."

Section 6. Section 15-70-225, MCA, is amended to read:

"15-70-225. Application for refund -- filing -- correction by department. (1) The application for refund shall be a signed statement, on a form furnished by the department of revenue, accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery, showing the total amount of gasoline purchased, the total amount of gasoline on which a refund is claimed, and the amount of the tax claimed for refund. Such further information pertaining to such claim shall be furnished as required by the department.

1 (2) A bulk delivery invoice issued by a dealer for a
 2 sale that does not qualify as a bulk delivery under
 3 15-70-201 is not valid for refund purposes.

4 ~~(2)(3)~~ All applications for refunds shall be filed
 5 with the department within 14 months after the date on which
 6 the gasoline was purchased as shown by invoices or after the
 7 date on which the tax was erroneously paid. A distributor
 8 may file a claim for refund of taxes erroneously paid within
 9 3 years after the date of such erroneous payment.

10 ~~(3)(4)~~ Should the department find that the statement
 11 contains errors which are not fraudulently inserted, it may
 12 correct the statement and approve it as corrected or the
 13 department may require the claimant to file an amended
 14 statement."

15 Section 7. Section 15-70-226, MCA, is amended to read:

16 "15-70-226. Approval or rejection of claim. (1) The
 17 department shall have 120 days after receiving the claim to
 18 approve or reject it. If approved, the department of revenue
 19 shall issue a credit in lieu of refund for the amount of the
 20 claim if the claimant is a distributor; for all other
 21 persons, a warrant shall be drawn upon the state treasurer
 22 for the amount of the claim.

23 (2) If the department determines that any claim has
 24 been fraudulently presented or is supported by invoice or
 25 invoices fraudulently made or altered or that any statement

1 in the claim or affidavit is willfully false and made for
 2 the purpose of misleading, the department may shall reject
 3 such claim in full. If a claim is rejected, the department
 4 may suspend claimant's right to refund for a period not to
 5 exceed 1 year."

-End-

STATE OF MONTANA

REQUEST NO. 334-79

FISCAL NOTE

Form BD-15

compliance with a written request received February 13, 19 79, there is hereby submitted a Fiscal Note
Senate Bill 459 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.
Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members
of the Legislature upon request.

DESCRIPTION

This proposed bill revises the law relating to the gasoline tax refund; providing that no refund is allowed for motorboat use; providing that only agricultural users may apply for a refund on the basis of estimated off-highway use; revising the method of recordkeeping required to claim a refund.

ASSUMPTIONS

The proposed legislation provides that no refund shall be allowed for motorboat use. This change will not result in any significant increase in gasoline license tax revenues.

The legislation provides that only agricultural users may apply for a refund on the basis of estimated off-highway use. This change should have minimal fiscal impact. Any other changes in the legislation will not have a significant effect on revenues.

FISCAL IMPACT

It is anticipated that the proposed law would have a minimal effect upon gasoline license tax receipts.

(Prepared by the Department of Revenue)

Richard L. Tranter
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 4/17/79